

**TESTIMONY**

**Presented by:** Rebecca Ternes  
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**Before:** Health Care Reform Review Committee  
Representative George Keiser, Chairman

**Date:** July 9, 2013

Good morning, Chairman Keiser and members of the committee. My name is Rebecca Ternes and I am the North Dakota Deputy Insurance Commissioner. I'm here today to update you on several aspects of the Patient Protection and Affordable Care Act (PPACA).

**History of Department decisions and activities**

Before I get into the information I was asked to present, I want to briefly review the Department's involvement with health care reform to bring the new members of the committee up to speed.

Following is a timeline of the Department's major decisions and activities since the law was passed in 2010.

**2010**

- The Department determined that North Dakota will not operate the temporary high risk health insurance pool.
- The Department applied for and received a federal \$1 million Exchange planning grant. The Insurance Department spent \$231,977.73 of this grant and the remainder was transferred to the North Dakota Department of Human Services in December 2012.
- The Department applied for and received a federal \$1 million Rate Review grant. The Department plans to return the remaining funds from this grant (\$763,208.76) prior to its expiration in September 2013 and not apply for an extension.

## 2011

- Three health care reform bills were introduced during the 2011 regular legislative session. House Bill No. 1125 dealt with enforcement; House Bill No. 1126 dealt with the Exchange; and House Bill No. 1127 dealt with appeals.
- Three more health care reform bills were introduced during the 2011 special session legislation. House Bill No. 1474 would have created a state-based Exchange; it failed the House. House Bill No. 1475 provided appropriations for DHS, ITD and NDID for defraying costs related to health care reform. House Bill No. 1476 was a bill to fix the external review bill from the 2011 regular session. The original bill did not sufficiently provide what the federal government required to allow NDID to have the external review authority for non-grandfathered plans.
- The Department hired HTMS to research and analyze options for an Exchange (now Marketplace) and determine the number of potential users of the Exchange.
- The Department hired a facilitator to hold stakeholder meetings around the state to gather input on the design and operation of an Exchange in North Dakota.
- The Department revised its external review process to comply with federal requirements and received approval to oversee external review for non-grandfathered health plans.
- The Department hired ITD to analyze the IT costs of an Exchange.
- The Department issued Bulletin 2011-3 to clarify the application of PPACA coverage for dependents under the age of 26. The Bulletin says that if the state dependent coverage law is more generous, it must also be considered in an effort to allow dependents to remain covered.

## 2012

- The Department hired INS Consultants, Inc. to study the state's Essential Health Benefits (EHB) options.
- The Department submitted North Dakota's EHB benchmark recommendation following a discussion and a straw vote with the 2011-2013 interim Health Care Reform Review Committee.

## 2013

- After several discussions with insurance carriers, the Department drafted House Bill No. 1168 that allowed the Commissioner to write Administrative Rules to define open and

special enrollment periods in the individual health insurance markets to avoid adverse selection.

Department staff members participate in a total of 12 calls in an average week regarding health care reform with the National Association of Insurance Commissioners and the federal agency in charge of implementing PPACA, the Center for Consumer Information and Insurance Oversight (CCIIO). The Department has testified 12 times in front of this interim committee since its creation in 2011.

### **Department role regarding rate and form filings**

In May, the Department provided guidance to insurance companies regarding its process for rate and form filing submission. The guidance applies to new policy forms being filed to comply with the Affordable Care Act both inside and outside the federally-facilitated Marketplace (formerly called the Exchange).

#### **Rate review:**

1. For products offered outside the Marketplace only, North Dakota will perform the rate review.
2. For products offered inside and outside of the Marketplace, North Dakota will perform its review based on the outside plan filing and submit that approval through SERFF.
3. For products offered inside the Marketplace only, North Dakota will not perform rate review.

#### **Form review:**

1. For products offered outside the Marketplace only, North Dakota will perform the review including review for state and federal requirements.
2. For products offered inside and outside of the Marketplace, North Dakota will accept a checklist attestation for federal reforms and review the filings for compliance with North Dakota statutory and regulatory requirements.
3. For products offered inside the Marketplace only, North Dakota will accept a checklist attestation for federal reforms and review all North Dakota statutory and regulatory requirements.

### Marketplace filings data

The Department is reviewing filings for plans effective January 1, 2014. The Product Filing Division is still working with companies to complete these filings by the federal deadline of July 31, but I do have some initial data to share with you today.

Company	# plans submitted for Marketplace	New product or product adjusted for metallic levels/EHB	On/off Marketplace
BCBS	15 group 19 individual	All new	Both
Sanford	5 group 4 individual	All new	Both
Medica	3 group 13 individual	All new	Both
Time Insurance	Outside market only	All new	Off only
John Alden	Outside market only	All new	Off only

Companies that filed with full pediatric dental:

- Blue Cross Blue Shield of North Dakota
- Time Insurance
- John Alden

Companies that filed standalone dental plans:

- Best Life and Health Insurance
- The Guardian Life Insurance Company of America
- Delta Dental

Because these form filings are not yet complete, we have no initial rate data to share. Although many states are comparing existing premium prices to those offered after January 1, 2014, we will not do so. These are essentially new products in our market with different sets of benefits and different out-of-pocket costs. The playing field has been leveled with the implementation of the Marketplace, putting health insurance carriers in a unique position of offering new products that will be launched at the same time with side-by-side comparisons available to consumers. No one is able to accurately predict take-up from outside the Marketplace to inside the

Marketplace nor is there any way to estimate whether more people will buy insurance because of the mandate and subsidies.

Carriers must set their prices to be competitive when open enrollment begins October 1, but adjustments will likely be made after enrollment begins and in 2014 after all the provisions of the law are in effect.

Just last week, HHS informed us the federal requirement for employers with 51 or more employees to report whether or not they are offering health insurance to their employees will be delayed one year. Effectively, this also delays the tax penalty that could be assessed to these employers. The penalty is assessed if an employer does not offer a certain level of coverage to employees or if that employer has even one employee eligible for a subsidy on the Marketplace. The purpose is to push more employers to maintain existing coverage and to encourage more employers to offer coverage for the first time. Whether or not this will have any real impact to numbers of insured or numbers of employers switching to Marketplace plans is yet to be seen.

### **Multi-state plans**

Under the Affordable Care Act, the U.S. Office of Personnel Management (OPM) was directed to contract with private health insurance issuers to offer at least two Multi-State Plans (MSPs) in each state. These plans will be available to eligible individuals and small businesses through the Marketplace. The intention for including these plans on the Marketplace is to offer plans from the same issuer to families or small businesses that may reside or operate in more than one state, and to ensure consumers have products to choose from when shopping for insurance.

The Department is not aware of any MSPs that have applied to sell in North Dakota at this time. OPM indicated on a recent phone call that a carrier may be interested in applying for the Multi-State Plan Program in North Dakota, but did not reveal the carrier. If a company is interested in selling MSPs in North Dakota and is not already licensed to do business here or is not licensed to sell major medical insurance, it could take some time for the Department to get through the approval process.

### **HB 1168 update**

When House Bill No. 1168 was introduced into the Legislature, the Center for Consumer Information and Insurance Oversight (CCIIO) had not released the final Market Rules, which include provisions for setting open enrollment periods for on and off Marketplace plans.

Since the publication of the final Market Rules in February, the Department reached out to representatives of CCIIO who confirmed that insurance carriers *must* synchronize open enrollment periods for all individual health insurance plans regardless of whether the plan is offered inside or outside the Marketplace. The Department therefore concluded that administrative rules on open enrollment periods in the individual market are not necessary at this time. The Department sent out this information to all stakeholders and insurance carriers. House Bill No. 1168 passed the House and Senate and was signed into law.

The Department will continue to monitor issues related to open enrollment periods and will reevaluate whether administrative rules may become necessary in the future in order to limit adverse selection from the Patient Protection and Affordable Care Act and other applicable laws.

Thank you and I'd be happy to answer any questions.